

Business Regulations
Important Questions

Two Marks:

1. Who is a Minor? 2015,2018

According to Indian Majority Act, 1875, a person attains majority on completion of 18 years of his age. But when a guardian of a minor person or property has been appointed by the court, he attains majority on completion of 21 years of age.

2. What is counter Offer? 2015, 2016,2017 and (V. imp)

Offer given in response to an offer. It implies rejection of the original offer and puts the ball back in the court of the original offerer.

who has three options: to

(1) accept it, expressly (by replying) or by implication (by not replying),

(2) issue another (counter-counter) offer, or

(3) reject it expressly. No binding contract can be created until one party accepts the other's offer. Counter offers come in many guises; a seller's acknowledgment (with estimated delivery dates) of a purchase order may, in fact, constitute a counter-offer.

3. Define Cartel under Competition Act 2002. 2015, (V. Imp)

"Cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services.

4. State any two ways in which breach of contract may arise. 2015

- ✓ Failure to provide services on time or in full
- ✓ Defective work or goods
- ✓ Non-payment
- ✓ Breaches of warranties

5. What is Hazardous substance? 2015,2016 (V. Imp)

Hazardous Substances means any toxic, radioactive, caustic or otherwise hazardous substance, including petroleum, its derivatives, by-products and other hydrocarbons, or any substance having any constituent elements displaying any of the foregoing characteristics.

6. Name any two objectives of FEMA? 2015

- Facilitating external trade
- For promoting the orderly development and maintenance of foreign exchange market in India.
- FEMA extends to the whole of India. It applies to all branches, offices and agencies outside India owned or controlled by a person, who is a resident of India.

7. Define the word 'Information' as per RTI Act? 2015, 2016 (V. imp)

"information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

8. What is Business Law\ Regulations? 2016 (Imp)

It refers to those legal rules which govern and regulate business transactions (trade, commerce and industry). It deals with contractual situations and right and obligations arising out of mercantile transactions between mercantile persons. Business laws establish the rules that all businesses should follow.

9. What is Coercion? 2016, 2017 (V. Imp)

Coercion is the act or process of persuading someone forcefully to do something that they do not want to do.

According to Sec 15 coercion means "Committing or threaten to commit any act forbidden by Indian Penal Code or unlawful detaining or threatening to detain any other persons' property with a view to enter into an agreement.

10. What is executed contract? 2016(imp)

In a contract where both the parties have performed their obligation.

An executed contract is a legal document that has been signed off by the people necessary for it to become effective. The contract is often made between two or more people, but it can also be between a person and an entity, or two or more entities.

11. What is quasi contract? 2016 (Imp)

In case of Quasi Contract there will be no offer and acceptance so, actually there will be no Contractual relations between the partners. Such a Contract which is created by Virtue of law is called Quasi Contract.

12. State any two objectives of COPRA Act,1986? 2016

- i) Protect the interest and safeguard the rights of the consumers.
- ii) Establishment of Consumer Dispute Redressal Agencies.

13. What is Novation? 2017 (Imp)

NOVATION (Sec 62): New contract substituted for old contract with the same or different parties.

14. Mention any two components of Environment?

- Atmosphere,
- Hydrosphere,
- Lithosphere and
- Biosphere.

15. Expand FEMA, COPRA, FERA, RTI, RTE,

FEMA: Foreign Exchange Management Act

FERA: Foreign Regulation Act

COPRA: Consumer Protection Act

RTI: Right to Information Act

RTE: Right to Education Act

16. Who is an unpaid seller? Imp

An unpaid seller is one whose entire price has not been paid or tendered. has accepted a bill of exchange for the price, but such bills have been dishonored.

17. What is promise?

Promise= a proposal when accepted becomes a promise

18. What is free consent?

For a valid contract it is necessary that the consent of parties to the contract must be free.

Example: X threatens to kill Y if he does not sell his car to X. Y agrees to sell his car to X. In this case, Y's consent has been obtained by coercion and therefore, it cannot be regarded as free.

19. Define Consumer? Customer, Buyer and Seller

"Consumer" means any person who buys any goods for a consideration which has been paid or promised, or partly paid and partly promised, or under a system of deferred payment.

20. What is deficiency?

"Deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

21. What is Injunction?

When a party is in breach of a negative term of contract the court may, by issuing an order, restrain him by doing what he promised him not to do. Such an order of the court is called injunction.

22. What do you mean by breach of contract?

A breach of contract is the failure of any party to fulfil the terms of a contract without a lawful excuse. M.COM, PGDPM, KSET

23. What is Bid-rigging? IMP

Bid rigging, illegal practice in which businesses conspire to allow one another to secure contracts at raised prices, thereby undermining free-market competition. Bid rigging violates antitrust laws and is closely related to horizontal price-fixing, in that both offenses involve collusion between supposed competitors in the same market group.

24. What is CONSIDERATION? Imp

Consideration is “something in return.” Consideration has been defined as the price paid by one party for the promise of the other. When a party to an agreement promises to do something, he must get “something” in return. This “something” is defined as consideration.

Example, X agrees to sell his motor bike to Y for Rs. 1,00,000. Here Y’s promise to pay Rs. 1, 00,000 is the consideration for X’s promise to sell the motor bike and X’s promise to sell the motor bike is the consideration for Y’s promise to pay 1, 00,000.

25. What is UNDUE INFLUENCE?

Sometimes a party is compelled to enter into a contract against his will as a result of unfair persuasion by the other party.

Section 16 defines undue influence as follows A contract is said to be induced by “undue influence”, where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

26. What is Rescission?

RESCISSION (Sec 62): When some or all terms of a contract are cancelled.

27. What is Consensus Ad Idem? (V IMP)

The parties to the agreement must have agreed about the subject matter of the agreement in the same sense and at the same time.

Unless there is consensus ad idem, there can be no contract.

28. What is Misrepresentation?

Misrepresentation is a false representation made innocently without any intention of deceiving the other party. It may include two things:

- (a) Wrong statement of a material fact not known to be false
- (b) Non-disclosure of facts where there is a legal duty to disclose without intention to deceive

29. Define Contract (V.V IMP)

Definition of Contract

A contract is an agreement made between two or more parties which the law will enforce.

Sec 2(h) defines contract “as an agreement enforceable by law”.

30. What is Agreement?

Agreement is defined as “every promise and every set of promises, forming consideration for each other”.

Promise= a proposal when accepted becomes a promise.

Agreement = Offer+ Acceptance

31. What do you mean by Voidable Contract?

Voidable Contract: If one party to the contract has the option of enforcing a contract by law, but not at the option of the other or others, it is a voidable contract.

32. Bilateral Contract?

It is a contract where both the parties are yet to perform their obligation. Bilateral & Executory are same and inter – changeable.

33. Void contract:

An agreement may be enforceable at the time when it was entered into but later on, due to certain reasons, for example impossibility or illegality of the contract, it may become void and unenforceable.

34. Definition of Acceptance

When the person to whom the proposal is made, signifies his ascent there to, the proposal (offer) is said to be accepted. A proposal (offer) when accepted becomes a Promise.

35. What do you mean by Damage? Types of Damages

Types of Damages:

1. Ordinary Damages
2. Special Damages
3. Vindictive Damages
4. Nominal Damages
5. Liquidated Damages.

36. Consumer Dispute?

"Consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.

37. Unfair Trade Practice

Unfair trade practice means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices

38. Authorized person

"Authorized person" means an authorized dealer, money changer, off-shore banking unit or any other person for the time being authorized under sub-section (1) of section 10 to deal in foreign exchange or foreign securities.

39. Capital account transaction

"Capital account transaction" means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of person's resident in India or assets or liabilities in India of person's resident outside India, and includes transactions referred to in sub-section (3) of section 6;

40. "Current account transaction:

"Current account transaction" means a transaction other than a capital account transaction and includes – (i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities (ii) payments due as interest on loans and as net income from investments, (iii) remittances for living expenses of parents, spouse and children residing abroad, and (iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children;

41. "foreign exchange"

"foreign exchange" means foreign currency and includes, - (i) deposits, credits and balances payable in any foreign currency, (ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency, (iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency

Six Marks Questions

1. Explain the exceptions to rule 'No Consideration No Contract' **Very Important**

1. A promise made out of material love and affection. [Sec. 25]:

An agreement expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection, between parties standing in a near relation to each other, is enforceable without consideration.

Example:

A agreed to pay Rs. 5000 to his younger brother out of natural love. This promise is in writing and registered. If A refuses to pay Rs. 5,000 to his younger brother, the latter can enforce the promise in the Court and A cannot refuse payment on the ground of absence of consideration. It should be noted that all the four conditions must be satisfied only then it will be valid without consideration, otherwise not.

2. A promise made to compensate for voluntary services [Sec. 25]:

A promise to compensate, wholly or in part, a person who has voluntarily done something for the promisor, or something which the promisor was legally compellable to do, is enforceable without consideration.

This rule, in fact, recognizes past consideration which was given without request or desire of the promisor.

Example:

A found B's purse and gave it to him. B promised to pay a reward of Rs. 50 to A. Later on, B cannot refuse payment on the ground that there was no consideration.

3. Written promise to pay a time-barred debt [Sec. 25(3)]:

A promise made in writing to pay a debt barred by the Law of Limitation is enforceable even without consideration.

Example:

A owes B Rs. 1,000 but the debt is barred by the Limitation Act. A signs a written promise to pay B the sum of Rs. 1,000. This is a valid contract.

4. Gift, etc. actually made:

Explanation I to Section. 25 provides that any gift actually made is valid.

Example:

A gave a watch as a gift to B on his birthday. Later on, A cannot demand his watch (gift) back on the ground that there was no consideration (as A did not get anything in return for the watch).

5. To create agency:

Under Sec. 185, no consideration is necessary to create an agency. Actually speaking, consideration is there even in an agency in the sense that the principal has agreed to be bound by the acts of the agent. Thus he undertakes the responsibility of the agent. We have seen earlier in Currie v. Misa's case that suffering responsibility is a good consideration.

2. Essential elements of a Valid Contract (important)

1. Offers and Acceptance
2. Legal Relationship

3. Lawful Consideration
4. Capacity of Parties
5. Free Consent 6. Lawful Objects
7. Writing and Registration
8. Certainty 9. Possibility of Performance
10. Not Expressly Declared Void

3. Kinds of Contract: Important

Contracts may be classified as follows:

1. On the basis of enforceability (a) Valid Contracts. (b) Void Contracts. (c) Voidable Contracts. (d) Illegal Contracts. (e) Unenforceable Contracts.

2. On the basis of mode of creation (a) Express Contracts. (b) Implied Contracts.

3. On the basis of the extent of execution. (a) Executed Contracts. (b) Executory Contracts.

4. Essentials of Valid Acceptance (Imp)

1. Acceptance must be given by that person only to whom the offer is made:

An acceptance to be valid must be given only by a person to whom offer has been given. In other words, acceptance must move from the offeree and no one else.

2. Acceptance must be communicated:

Offeree has to communicate his acceptance to offerer.

3. The acceptance must be given within the time prescribed or within a reasonable time:

Sometimes, the time limit is fixed within which an acceptance is to be given. In such cases, the acceptance must be given within the fixed time limit. In case, no time is prescribed, the acceptance should be given within a reasonable time. The term 'reasonable time' depends upon the facts and circumstances of each case.

4. Acceptance must be Un-Conditional:

It is another important essential element of a valid acceptance. A valid contract arises only if the acceptance is absolute and unconditional. It means that the acceptance should be in total and without any condition.

6. Acceptance must be communicated in the method specified by offerer:

When an offer is made for the same, acceptance must be communicated in the method specified by offerer.

7. The acceptance must be given before the lapse of offer:

A valid contract can arise only when the acceptance is given before the offer has elapsed or withdrawn. An acceptance which is made after the withdrawal of the offer is invalid, and does not create any legal relationship

8. The acceptance must be communicated:

It is an important and essential element of a valid acceptance.

5. DISCHARGE OF CONTRACT (Imp)

- Discharge by Performance
- Discharge by Agreement or Consent
- Discharge by Impossibility of Performance
- Discharge by Lapse of Time
- Discharge by Operation of Law
- Discharge by Breach of Contract

6. CONSUMER DISPUTE REDRESSAL AGENCIES

CONSUMER DISPUTE REDRESSAL AGENCIES



7. Scope of Business law (IMP)

The scope of mercantile law is very wide and varied. It includes law relating to contracts, partnership, sale of goods, negotiable instruments, companies etc.

1. The Indian Contract Act,1872
2. The Sale of Goods Act,1930
3. The Partnership Act,1932
4. The Negotiable Instruments Act,1881
5. The Companies Act,1956
6. The Patents Act,1970
7. The Trade and Merchandise Marks Act,1958
8. The Consumer Protection Act,1986
9. Environmental Protection Act,1986

8. Sources of Business Law (IMP)

Indian mercantile law is based largely upon the English mercantile law.

- 1) English mercantile law :
 - a) Common law b) Equity c) Statute law d) Case Law e) Merchant law
- 2) Customs and usages
- 3) Statute law
- 4) Case laws

9. ESSENTIAL ELEMENTS OF A CONTRACT OF SALE (Very important)

Two parties: There must be 2 distinct parties i.e. a buyer and a seller, to affect a contract of sale and they must be competent to contract

Goods: There must be some goods the property in which is or is to be transferred from the seller to the buyer. The goods which form the subject-matter of the contract of sale must be movable. Transfer of immovable property is not regulated by the Sale of Goods Act.

Price: Price is an essential ingredient for all transactions of sale and in the absence of the price or the consideration, the transfer is not regarded as a sale.

The transfer by way of sale must be in exchange for a price.

Transfer of general property: There must be a transfer of general property as distinguishes from special property in goods from the seller to the buyer.

Essential elements of a valid contract: All essential elements of a valid contract must be present in the contract of sale.

10. RIGHTS OF UNPAID SELLER (V.V.IMP)

1. Right of Lien He can exercise right of lien, he has to fulfil the following conditions.

- a) He must be unpaid seller
- b) There should be no credit terms in the Contract of Sale.
- c) After completion of credit period, right of lien can be exercised.
- d) The unpaid seller should have obtained those goods lawfully.
- e) Amount must be due on those goods only against which right of lien is decided.

2. Right of stoppage in transit Unpaid Seller has right to stop the goods in the transit itself. To exercise this right, the following conditions are to be fulfilled.

- a) He must be unpaid seller.
- b) Buyer must be insolvent.
- c) There should be no credit terms in the Contract of Sale. After expiry of Credit period, this right can be exercised. d) Amount must be due on those goods only against which this right is desired.

3. Right to re-sale

The unpaid seller can re-sell the goods for non-payment of price by buyer. He can exercise this right when the goods are of perishable nature while doing so it is beneficiary to the seller to give a notice to buyer with regard to resale.

4. Right to sue for price:

It is fundamental right of buyer to file a suit for recovery of unpaid price. In the case of sale. Suit will be made for price balance, but not for compensation.

5. Right to sue to interest:

If the buyer makes unreasonable delay for making payment, the seller has right to claim interest also

6. Right to sue for compensation

When an agreement to sell is breached, the seller can sue only for compensation for the breach of Contract.

11. RIGHTS OF BUYER (Imp)

1. He has the right to have delivery of the goods as per the contract.
2. If the seller does not send, as per the contract, the right quantity of goods to the buyer, the buyer can reject the goods.
3. The buyer has a right not to accept delivery of the goods by instalments by the seller.
4. If the goods are sent by sea route by the seller, the buyer has a right to be informed by the seller so that he may get the goods insured.
5. The buyer has a right to examine the goods which he has not seen earlier before giving his acceptance for the same.
6. If the seller wrongfully refuses to deliver the goods to the buyer as per the contract, the buyer may sue the seller for damages for non-delivery. The amount of damages will be the difference between the contract price and the market price of the goods.
7. If the buyer has already paid the price and the seller has not delivered the goods as per the contract, the buyer can recover the amount paid.
8. If the contract is for the sale of specific or ascertained goods, the buyer may sue the seller for the specific performance of the contract in case of breach of contract by the latter.
9. The buyer may sue the seller for damages for the breach of any implied warranty as per the provisions of this Act.
10. If the seller rejects the contract before the date of delivery, the buyer may either treat the contract as still existing or wait till the date of delivery or he may treat the contract as cancelled and sue the seller for damages for the breach. The second case is known as the anticipatory breach of contract.
11. If, in view of the breach of contract by the seller, the price has to be refunded to the buyer, the buyer has a right to claim interest on the amount.

12. DUTIES OF THE BUYER IN A CONTRACT OF SALE (IMP)

The following are the duties of a buyer in a contract of sale

1. It is the duty of the buyer to accept the goods and pay for them in accordance with the terms of the contract.
2. It is the duty of the buyer to apply for delivery.
3. It is the duty of the buyer to demand delivery of the goods within a reasonable time.
4. If the contract specifically provides for the delivery of the goods by the seller by instalments, the buyer shall accept such a delivery.
5. If the buyer refuses to accept the goods, it is his duty to inform the seller about it.
6. If the seller delivers the goods as per the contract, it becomes the duty of the buyer to take delivery of the same within a reasonable time. He remains liable to the seller for any loss arising on account of his refusal to take delivery.
7. If the ownership rights have already been passed on to the buyer by the seller, the former has the duty to pay the price as per the terms of the contract.
9. If the buyer wrongfully refuses to accept and pay for the goods, he will have to compensate the seller for damages for non-acceptance.

13. FEATURES OF FEMA (IMP)

- It is consistent with full current account convertibility and contains provisions for progressive liberalization of capital account transactions.
- It is more transparent in its application as it lays down the areas requiring specific permissions of the Reserve Bank/Government of India on acquisition/holding of foreign exchange.
- It classified the foreign exchange transactions in two categories, viz. capital account and current account transactions.
- It provides power to the Reserve Bank for specifying, in , consultation with the central government, the classes of capital account transactions and limits to which exchange is admissible for such transactions.

- It gives full freedom to a person resident in India, who was earlier resident outside India, to hold/own/transfer any foreign security/immovable property situated outside India and acquired when s/he was resident.
- This act is a civil law and the contraventions of the Act provide for arrest only in exceptional cases

14. DUTIES OF THE EXPORTER

- To disclose the material information
- To ensure the receipts of export proceeds
- To inform delayed receipts
- To make declaration in respect of services

15. IMPORTANT PROVISIONS OF - ENFORCEMENT OF THE ORDERS OF ADJUDICATING AUTHORITY (V. IMP)

1.Obstruction in recovery of Penalty:

- a) If the defaulter has obstructed the recovery of penalty, or dishonestly transferred, concealed, or removed any part of his property.
- b) If defaulter has means to pay the amount of penalty but refuses or neglects to pay the same.

2.Intend to Abscond

A warrant for the arrest of the defaulter may be issued by the Adjudicating Authority if satisfied, that the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Adjudicating Authority.
(A warrant of arrest issued by the Adjudicating Authority may also be executed by any other Adjudicating Authority within whose jurisdiction the defaulter may for the time being be found.)

(3) Non- Compliance of Served Notice:

The Adjudicating Authority may issue a warrant for the arrest of the defaulter if such person does not comply with notice issued and served to present himself before the authority.

(4)Presenting Arrested person before the authority:

Every person arrested in pursuance of a warrant of arrest under this section shall be brought before the Adjudicating Authority issuing the warrant as soon as practicable and in any event within 24 hours of his arrest (exclusive of the time required for the journey). But, if the defaulter pays the amount entered in the warrant and the costs of arrest to the officer arresting him, he should be released at once.

(5) Opportunity of Being Heard:

When a defaulter appears before the Adjudicating Authority pursuant to a notice to show cause or is brought before the Adjudicating Authority shall give the defaulter an opportunity of being heard

(6) Detention in the Custody:

Pending the conclusion of the inquiry, the Adjudicating Authority may, in his discretion, order the defaulter to be detained in the custody of such officer as the Adjudicating Authority may think fit or release him on his furnishing the security amount to the satisfaction of the Adjudicating Authority for his appearance as and when required. Upon the conclusion of the inquiry, the defaulter will be released by giving an opportunity to satisfy the arrears of penalty with a period of 15 days. If arrears are not satisfied, the Adjudicating Authority may make an order for the detention of the defaulter in the civil prison and cause him to be arrested if he is not already under arrest. Sec 14(9) .

(7) Release of the Defaulter”

When the Adjudicating Authority does not make an order of detention under Sec 14(9), he shall, if the defaulter is under arrest, direct his release.

(8) Execution of Certificate:

Every person detained in the civil prison in execution of the certificate may be so detained-

- (a) where the certificate is for a demand of an amount exceeding rupees one crore, up to 3years, and
- (b) in any other case, up to 6 months:

(9) Compounding of offence:

All contravention punishable under section 13 can be compounded within 180 days from the date of receipt of application by the Director of Enforcement or other authorities. — NO compounding allowed:

- (a) Where amount is not quantifiable.
- (b) appeal has been filed.
- (c) contravention has been repeated within 3 years' contravention by an authorized dealer.

16. Objective of the Competition Act, 2002 (Imp)

An Act, keeping in view of the economic development of the country, was laid down to provide for an establishment of a commission with the following object:

- to prevent practices having adverse effect on competition,
- to promote and sustain competition in markets, -
- to protect the interests of consumers,
- to ensure freedom of trade carried on by other participants in markets in India and -for matters connected therewith or incidental thereto.

17. Features of Competition Act, 2002

The focus of the new law is towards the following areas affecting competition namely:

1. **Prohibition of certain agreements, which are considered to be anticompetitive in nature.** Such agreements [namely tie in arrangements, exclusive dealings (supply and distribution), refusal to deal and resale price maintenance] shall be presumed as anti- competitive if they cause or are likely to cause an appreciable adverse effect on competition within India.
2. **Prohibition of Abuse of dominant position-** If an enterprise by imposing unfair or discriminatory conditions or limiting and restricting production of goods or services or indulging in practices resulting in denial of market access or through in any other mode are prohibited.
3. **Regulation of combinations** which cause or are likely to cause an appreciable adverse affect on competition within the relevant market in India is also considered to be void.
4. **Entrust Competition** Commission of India the responsibility of undertaking competition advocacy, awareness and training about competition issues.

18. Objectives of COPRA ACT

The main objective of the Consumer Protection Act, 1986 is to

i) Protect the interest and safeguard the rights of the consumers which are as follows:

- a) Right to be protected against the marketing of goods and services which are hazardous to life and property.
- b) Right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumer against unfair trade practices.
- c) Right to be assured, wherever possible, access to a variety of goods and services at competitive prices
- d) Right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums
- e) Right to seek Redressal against unfair trade practices and unscrupulous exploitation of consumers Right to consumer education.

ii) Establishment of Consumer Dispute Redressal Agencies.